

IN THE NATIONAL COMPANY LAW TRIBUNAL, MUMBAI BENCH
COURT III

I.A. No.1123/2021
IN
C. P. No. 2714/I&B/2018

Filed By

Prestige Estates Projects Limited
Falcon House No. 1
Main Guard Cross Road
Bangalore-560 001

...Applicant

Vs.

1. Mr. Jayesh Sanghrajka & Ors.
Erstwhile Resolution professional of
Aristo Developers Private Limited
405-408, Hind Rajasthan Centre
D.S. Phalke Road, Dadar (East)
Mumbai – 400014.
....Respondent No.1
2. The Committee of Creditors of
Aristo Developers Private Limited
....Respondent No. 2
3. The Monitoring Agency of
Aristo Developers Private Limited
....Respondent No. 3

In the matter of

Dipco Private Limited
....Financial Creditor

Vs.

Aristo Developers Private Limited
.....Corporate Debtor

Reserved for order on: 31.03.2023

Order Pronounced on: 17.04.2023

Coram:

Hon'ble Shri. H.V. Subba Rao, Member (Judicial)

Hon'ble Ms. Madhu Sinha, Member (Technical)

Appearance:

For the Applicant: Mr. Chetan Kapadia, Mr. Viraj Parikh and

Mr. Akash Agarwal, i/b ABH Law LLP.

For the Respondent: Mr. Chintan Gandhi.

Per: Madhu Sinha, Member (T)

ORDER

1. The present application is filed by Prestige Estates Projects Limited (hereinafter called as the "applicant") under section 60(5) of the Insolvency and Bankruptcy Code, 2016 (hereinafter called as the "Code") against Mr. Jayesh Sanghrajka & Ors (hereinafter called as the "Erstwhile RP" or "Respondent"). Mr. Jayesh Sanghrajka is the Erstwhile Resolution Professional of Ariisto Developers Private Limited (hereinafter called as the "Corporate Debtor"). The Resolution Plan of the Corporate Debtor was approved by this Bench vide order dated 23.03.2021. The applicant in this application is seeking the following reliefs:

- a. *That this Hon'ble Tribunal be pleased to grant the Applicant an extension of 30 (thirty) days in making payment of the Upfront Cash of Rs. 370,00,00,000/- (Rupees Three Hundred and Seventy Crore Only) to the COC of the Corporate Debtor.*
- b. *That this Hon'ble Tribunal be pleased to grant the Applicant an extension of 6 (six) months in complying with its obligation of handing over possession of flats and*

commercial area to the homebuyers and the COC respectively under the Resolution Plan over and above the 3.5 (three point five) year and 4 (four) years respectively, which period of 3.5 (three point five) years and 4 (four) years be computed from the actual date of payment of the Upfront cash by the Applicant and not from the Plan Approval Date as is mentioned in the Resolution Plan, pursuant to which the timelines for handover of possession of flats and commercial area to the homebuyers and the COC shall be as follow:

- (i) Possession to Homebuyers – 4 (four) year from the actual date of payment of Upfront Cash by the Applicant; and*
- (ii) Possession to COC's Commercial Area - 4.5 (four point five) years from the actual date of payment of the Upfront Cash by the Applicant;*
- c. That this Hon'ble Tribunal be pleased to grant the Applicant necessary extension of time for completing various other actions under the Resolution Plan;*
- d. That this Hon'ble Tribunal be pleased to direct the Resolution Professional, CoC and Members of the Monitoring Agency of the Corporate Debtor to maintain status quo in respect of the Corporate Debtor till the successful implementation of the Resolution Plan by the Applicant;*
- e. That this Hon'ble Tribunal be pleased to permit the applicant to obtain the necessary approvals required under any law for the time being in force within 1 (one) year from the date of the order passed herein or within such period as may be provided for in such law, whichever is later.*
- f. That pending the hearing and final disposal of the present Application, this Hon'ble Tribunal be pleased to pass*

necessary orders restraining the Resolution Professional, COC, members of the monitoring Agency and any other stakeholders of the Corporate Debtor from taking any steps that may adversely impact the interest of the Corporate Debtor or the Applicant including any action which will prejudicially affect the interests of the Applicant and value maximization of the Corporate Debtor'

- g. That pending the hearing and final disposal of the present Application, this Hon'ble Tribunal be pleased direct the Resolution Professional, COC and members of the Monitoring Agency of the Corporate Debtor to maintain status quo in respect of the Corporate Debtor;*
- h. That pending the hearing and final disposal of the present application, this Hon'ble Tribunal be pleased to restrain the Resolution Professional, COC and members of the Monitoring Agency of the Corporate Debtor from entering into / executing any contracts, agreements or documents in respect of the Corporate Debtor except in the ordinary course of business of the Corporate Debtor;*
- i. That pending the hearing and final disposal of this Application, this Hon'ble Tribunal be pleased to restrain the Resolution Professional, COC members of the Monitoring Agency from encashing invoking the earnest money deposit and / or performance bank guarantee submitted by the Applicant;*
- j. For ad interim reliefs in terms of (f) to (i) above; and*
- k. For such other and further order(s) as this Hon'ble Tribunal may deem fit and proper in the facts and circumstances of the case.*

2. The facts leading to filing the above application are follows:

- i. By its order dated March 23, 2021 ("**Plan Approval Order**") passed in M.A. No. 3714 of 2019 in C.P. No. (IB) 4697(MB)/2018, this Hon'ble Tribunal was pleased to approve the Resolution Plan dated October 24, 2019 along with its two Addendums dated November 14, 2019 ("**Resolution Plan**") submitted by the Applicant under Sections 30 and 31 of the Insolvency and Bankruptcy Code, 2016 ("**Code**"). The said Plan Approval Order was received by the Applicant on March 25, 2021 ("**Plan Approval Date**").
- ii. Respondent No. 1 is the erstwhile Resolution Professional of the Corporate Debtor ("**Resolution Professional**"). Respondent No. 2 is the Committee of Creditors of the Corporate Debtor ("**CoC**"). Respondent No.3 is the Monitoring Agency appointed in respect of the Corporate Debtor under the Resolution Plan ("**Monitoring Agency**").
- iii. As per the terms of the Resolution Plan, the Applicant had proposed a payment of Rs. 370,00,00,000/- Crores (Rupees three hundred and seventy crore only) ("**Upfront Cash**") to be made to the Committee of Creditors ("**CoC**") within 60 (sixty) days from the Plan Approval Date, i.e., on or before May 24, 2021. As per Paragraph 3 of the Resolution Plan (Sources of Funds and Transactions) the Applicant was required to make the payment of Upfront Cash from its internal accruals or financing arranged by it from any financial institution.
- iv. The Applicant has filed this present Application seeking an extension of:
 - a. 30 (Thirty) days in complying with its payment obligation of the Upfront Cash under the Resolution Plan; and

- b. 6 (six) months in complying with its obligation of handing over possession of flats and commercial area to the homebuyers and the CoC respectively under the Resolution Plan over and above the 3.5 (three point five) years and 4 (four) years respectively, in the manner provided in this paragraph 6. In addition to the aforesaid, the Applicant also requests that seeking a revision in the method of computing the time-period of 3.5 (three point five) years and 4 (four) years for handing over possession of flats and commercial area to the homebuyers and the CoC respectively. In this regard, the Applicant requests that on account of the reasons set forth in the subsequent Paragraphs of this present application, the time-period between the Plan Approval Date up to the date of actual payment of Upfront Cash by the Applicant be excluded for the purposes of computation of the period of 3.5 (three point five) years and 4 (four) years from the Plan Approval Date, within which the possession of flats and commercial area had to be handed over to the homebuyers and the CoC respectively as per the terms of Resolution Plan and accordingly, the Applicant is seeking to compute the aforesaid period of 3.5 (three point five) years and 4 (four) years from the actual date of payment of the Upfront Cash by the Applicant and not from the Plan Approval Date, as is mentioned in the Resolution Plan, pursuant to which the timelines for handover of possession of flats and commercial area to the homebuyers and the CoC shall be as follows:

- Possession to Homebuyers - 4 (four) years from the actual date of payment of Upfront Cash by the Applicant; and
 - Possession to COC's Commercial Area – 4.5 (four point five) years from the actual date of payment of the Upfront Cash by the Applicant.
- v. The Applicant further submits that the Applicant's Resolution Plan was approved by a thumping majority of 86.67%. The Resolution Plan has brought down the timeline for completion of the project from 11 (eleven) years to 4 (four)/4.5 (four point five) years. The members of the COC are receiving the Upfront Cash/allotment of commercial premises of the valuation of approximately Rs. 1600 crores (Rupees sixteen hundred crore only) as against liquidation value of the project of Rs. 754.84 crores.
- vi. In view of the aforesaid, the Applicant respectfully submits that the present Application be made absolute in order to enable the Applicant to fulfil its obligations under the Resolution Plan and to ensure value maximisation of the Corporate Debtor.

3. The Submissions from the Reply filed by the Respondent

No. 1 are as follows:

- i. The corporate insolvency resolution process ("CIRP") of the Corporate Debtor was initiated by this Hon'ble Adjudicating Authority vide order dated November 20, 2018 in the captioned Company Petition. Initially, Mr. S. Gopalkrishnan was appointed as the Interim Resolution Professional (IRP) to take charge of the Corporate Debtor. Subsequently, the first committee of creditors (COC) meeting took place on December 24, 2018 and the COC members confirmed my

appointment of as the Resolution Professional (RP) for the Corporate Debtor.

ii. A summary of timeline and other clauses under the Resolution Plan relevant to the subject matter of the captioned application is as follow:

- a. As per sub-clauses 3(a) and 3(b) of Clause 2 of the Resolution Plan, the Applicant proposed that houses will be delivered to the homebuyers within 4 years from the date of commencement of construction. However, this timeline was modified by the Applicant vide its letter/addendum dated November 14, 2019. Under the said letter/addendum the Applicant proposed to deliver possession of homes to homebuyers within three and half years of NCLT order.
- b. As per sub-clause 2(b) of Clause 2 of the Resolution Plan, the Applicant Propose that 8 lakh square feet of commercial area will be delivered to the CoC in the 4th, 5th, 6th and 7th years (pg. no. 82 of the Application). However, this timeline was modified by the Applicant vide its letter/addendum dated November 14, 2019 (pg. no. 105 of the Application). Under the said letter/addendum the Applicant proposed to deliver possession of homes to homebuyers within four years of NCLT order.
- c. As per the Applicant's addendum dated November 14, 2019, the Applicant proposed to pay the upfront consideration amount of INR 370 crores to the CoC within 60 days of NCLT order.
- d. As per Clause 1.7 of the Resolution Plan, the Applicant has carved out a condition/exception with regard to the implementation of Resolution Plan and with regard to

amounts paid by the Applicant to any of the creditors during the course of implementation of Resolution Plan. Clause 1.7 of the Resolution Plan is reproduced as under:

“1.7 Implementation during Legal Proceedings

During the pendency of any Proceedings challenging the terms and conditions of this Resolution Plan, the Resolution Applicant shall not be liable to implement the terms and conditions of this Resolution Plan and any amounts paid by the Resolution Applicant in the course of implementation of the Resolution Plan, to any of the Creditors of the Resolution Plan shall be refunded in full. In the event that any dispute, difference and/or Proceedings are commenced in relation to the terms and conditions of this 18 Resolution Plan, the same shall not have any adverse effect on the continued operations of the Undertaking of the Corporate Debtor.”

- iii. Once the Applicant's Resolution Plan was approved by the CoC with more than the prescribed majority, the Resolution Professional filed an application viz. M.A. 3714 of 2019 in C.P. 2714 of 2018 under Section 30 of the Code for approval of the Applicant's Resolution Plan. By its order dated March 23, 2021 ("Plan Approval Order"). this Adjudicating Authority was pleased to approve the Resolution Plan submitted by the Applicant under Sections 30 and 31 of the Code. The Applicant has stated that it had received the Plan Approval Order on March 25, 2021. A copy of the Plan Approval Order is annexed as Exhibit A at page no. 26 to the Application. It is pertinent to point out that from the date of Plan Approval Order, I have become functus officio as the RP of the Corporate Debtor. I am neither a part of the

Monitoring Agency nor have any voting rights at the meetings of the Monitoring Agency. I am currently assisting Monitoring Agency in conducting meetings for overseeing the implementation of the resolution plan and ongoing litigations.

- iv. Shortly thereafter i.e. on 24 May 2021, the Applicant filed the captioned application before this Adjudicating Authority. During the time that the captioned application was pending adjudication before this Adjudicating Authority, Maharashtra Real Estate Regulatory Authority (MahaRERA) extended the period of validity of registration of projects by six months for projects whose completion date, revised completion date or extended completion date was to expire on or after 15 April 2021. Further, the Applicant had filed an Additional Affidavit on March 3, 2022 indicating that it had infused the upfront consideration of INR 370 crores on June 23, 2021 i.e. 30 days after the expiry of timeline on May 24, 2021. In the said Additional Affidavit, the Applicant also pointed out the progress/ additional steps achieved by the Applicant with regard to the construction of buildings/project. A copy of the MahaRERA Order No. 21/2021 dated August 6, 2021 is annexed as Exhibit B to the Applicant's Additional Affidavit dated March 3, 2022 at page no. 8.
- v. The respondent is relied upon the judgment of ***Panch Tatva Promoters Pvt. Ltd. versus GPT Steel Industries Ltd. and Ors.***, Company Appeal (AT) (Insolvency) No. 642 of 2020, when the Hon'ble NCLAT was faced with the issue of eligibility of a resolution applicant in the light of the latter's alleged failure to fulfill its commitments in the CIRP of two

Companies (not being the Corporate Debtor), the Hon'ble NCLAT by its order dated August 18, 2021 held as follows:

“33. It is pertinent to mention that delay in implementation of Resolution Plan cannot be considered the same as failure in implementing the Plan. The ineligibility as specified under Regulation 38 (1B) of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations 2016 establishes the ineligibility in clear terms by stating that “the Resolution Applicant or any of its related parties has failed to implement or contributed to the failure of implementation of any other Resolution Plan approved by the Adjudicating Authority at any time in the past.”

34. Therefore, delay in implementation of the Resolution Plan cannot be considered as a ground for ineligibility of the Resolution Applicant.

....

36. Therefore, it is clear that the COC deliberated Respondent No. 3's eligibility and thereafter, considering the statement of Respondent No. 3, took a conscious commercial decision in accepting its Resolution Plan. Moreover, judicial notice may be taken of the prevailing situation the entire world is facing on account of the Covid 19 pandemic. Therefore, if there is some delay in implementing the Plan, it cannot be considered a failure in implementing the Resolution Plan, thereby making the Resolution Applicant ineligible for submission of the Resolution Plan under Regulation 38 (1B) of the CIRP Regulations.”

- vi. The Respondent/ Resolution Professional submits that, I have become functus officio from the date of the Plan approval order. This, I have no authority to permit/approve the extension of timeline as sought by the Resolution

Applicant through its letter dated 21 May 2021. I am filing the present limited affidavit in reply only because I have been arrayed as a party respondent. I repeat and reiterate that I have no specific objections to the reliefs/directions sought by the Applicant in the captioned application and I submit that this adjudicating Authority be pleased to decide the captioned application in light of the legal position governing the subject matter.

FINDINGS

4. Heard Mr. Chetan Kapadia the counsel appearing for the applicant and Mr. Chintan Gandhi counsel appearing for the Resolution Professional and perused the written statements, additional affidavit and the documents presented by them as well as the reply submitted by the respondent.
5. This bench observed that the Resolution Plan contemplated the date for an upfront payment of Rs. 370 crores by the Successful Resolution Applicant within 60 days from the date of approval of the Resolution Plan i.e. by 24th May 2021. The payment was made by the Successful Resolution Applicant on 23rd June 2021, i.e. with a delay of 30 days which delay is attributed by the applicant (Successful Resolution Applicant) to be on account of the 2nd wave of the COVID-19 pandemic. Therefore, the applicant seeks bench's approval for a 30 days extension for the said upfront payment.
6. The Resolution Plan contemplated construction of the buildings in the real estate project of the Corporate Debtor within 3.5 years and 4 years from the date of approval of the Resolution Plan respectively. However, as the Resolution Plan was submitted prior to the onset of the COVID-19 pandemic. The applicant could not have contemplated the impact of the pandemic on real estate projects.

7. The 2nd wave of the COVID-19 pandemic struck the city of Mumbai in April 2021, just after the approval of the Resolution Plan. The 2nd wave of the COVID-19 pandemic had a negative impact on the Applicant's ability to construct the buildings, as did all other real estate developers in the city.
8. MahaRERA which is the statutory regulator for the real estate sector in Maharashtra, has recognized the impact of the 2nd wave of the COVID-19 pandemic on real estate projects and granted an extension of 6 months to all projects by way of its Circular dated 6th August 2021.
9. The Applicant also prays that the construction period ought to be computed from the date of Upfront Payment and not the date of approval of the Resolution Plan.
10. Pertinently, the Applicant has made progress in the construction of the buildings as contemplated in the Resolution Plan. The key steps that have been achieved as on the date of Application are as follows:
 - i. The Applicant will revalidate *Siesta* with MahaRERA on within 60 days;
 - ii. The Applicant has secured commencement certificate ("**CC**") for *Siesta* on January 14, 2022 (Revalidation of earlier CC).
 - iii. The Applicant has already constructed upto Level 14 (RCC Structure).
 - iv. The Applicant will be registering *Bellanza* with MahaRERA within 90 days; and
 - v. The Applicant has secured CC (upto Plinth) for *Bellanza* on January 14, 2022 (Revalidation of earlier CC).
 - vi. The Applicant is yet to commence foundation works for *Bellanza*.

11. The Applicant further for giving support to his arguments also mentioned case law and mentioned different rules regulations which are as follows:

- i. Clause 1.5.2 of the Resolution Plan at Pg. 90, provides for NCLT to remove any difficulty

1.5.2. In the event, that any difficulty or ambiguity arises in interpretation of any provisions of this Resolution plan or otherwise, the Resolution Applicant shall be entitled to make necessary applications to the Hon'ble NCLT to remove such difficulty and ambiguity without further approval of the COC or any Financial Creditors.

- ii. Regulation 40C of IBBI CIRP Regulations also provides for extension of all timelines under the Code on account of COVID- 19

Notwithstanding the time-lines contained in these regulations, but subject to the provisions in the Code, the period of lockdown imposed by the Central Government in the wake of Covid-19 outbreak shall not be counted for the purposes of the time-line for any activity that could not be completed due to such lockdown, in relation to a corporate insolvency resolution process.

- iii. The Hon'ble NCLAT has held that such a power exists in its Order dated 03.03.21 in Company Appeal (AT) (Insolvency) No. 146 of 2021, Paras. 4 and 5

"4. The Hon'ble Supreme Court of India in suo motu Writ Petition (Civil) Nos. 3/2020 order dated 23.03.2020 and this Appellate Tribunal in suo motu Company Appeal (AT) (Ins) No. 01/2020 order dated 30.03.2020 have provided appropriate direction for condonation or extension of period of limitation. The IBBI has also inserted Regulation 40C to the IBBI (Insolvency Resolution Process for

Corporate Persons) Regulations 2016 for not considering the period of lockdown for the purpose of timeline of any activity under the Code, subject to the provisions of the Code.

5. Considering the submissions made, directions of Hon'ble Supreme Court as stated above and this Appellate Tribunal on Covid-19 Pandemic including 60% payment released by the Resolution Applicant even in Global Pandemic, we do not find any infirmity in the impugned order for excluding the period of lockdown from the schedule of making payment under the approved Resolution Plan. Hence, we do not find any merit in the appeal and the appeal deserves to be dismissed and is accordingly dismissed.”

12. The Bench has considered the above arguments of both the parties, rules, regulations and case laws. We observe that the Applicant has already made the upfront Cash Payment of amount of Rs. 370 Crores albeit with a delay of 30 days. He has prayed for an extension of 6 months for the delivery of flats to homebuyers/ CoC on account of delays/ difficulties faced by him during the COVID-19 lockdown period, for which a lenient approach has been taken in IBC provisions, other regulators like MahaRERA, and in the case laws cited above. Further, there are other steps taken by the SRA to complete the projects as submitted in the affidavit submitted by SRA. The delays as submitted by the Applicant, are largely attributed to the COVID 19 and subsequent lockdown in the year 2020-21. It is also appropriate to mention here that the respondents which include the RP, CoC and Monitoring agency including homebuyers, have not submitted any objection to the said

reliefs sought by the Applicant and Respondent No. 1 has requested the bench to adjudicate the same.

13. Looking at these facts the amount of Cash already infused, effort made for completion of project, and considering the reason cited for delays this court is satisfied on the extension by approving the timelines as below:
- i. Extension of 30 days in making upfront cash payment of Rs. 370 crores to the CoC.
 - ii. Extension of 6 months in timelines for handover of offices/ flats to the CoC/ allottees.
 - iii. Computation of timelines for handover of offices/ flats from the date of upfront payment.
14. Accordingly, in respect of prayers (a) and (b) and ad-interim reliefs as per prayers (f) to (i) are granted. As regard prayers (c) to (e) the court has not adjudicated on the same. All other terms and conditions of the approved Resolution Plan remain the same and the court reiterates that any reliefs sought by the Resolution Applicant will be subject to any law for the time being in force, within such period as may be prescribed.
15. Therefore, the above **I.A. 1123/2021 is partly allowed and disposed of.**

Sd/-
MADHU SINHA
MEMBER (TECHNICAL)

Sd/-
H.V. SUBBA RAO
MEMBER (JUDICIAL)